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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/626,184	07/24/2003	William E. Welnick	CS23200RL	1465

20280 7590 06/19/2007
MOTOROLA INC
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EXAMINER	
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ART UNIT	PAPER NUMBER
2617	

MAIL DATE	DELIVERY MODE
06/19/2007	PAPER

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/626,184
Filing Date: July 24, 2003
Appellant(s): WELNICK ET AL.

MAILED

JUN 19 2007

Technology Center 2600

Roland K. Bowler II
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed on 03/28/2007 appealing from the Office action mailed 12/12/2006.

(1) Real Party in Interest
A statement identifying the real party in interest is contained in the Brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings, which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct, however, the following grounds of rejection are not presented for review on appeal because they have been withdrawn by the examiner. Claims 2-3 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

US 2004/0203838 A1	Joshi et al.	10-2004
US 6,160,799	Krause et al.	12-2000

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims, however, the following grounds of rejection are not presented for review on appeal because they have been withdrawn by the examiner. Claims 2-3 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim Rejections - 35 USC § 103

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

2. **Claims 1, 4-13** and **17-19** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Joshi et al., U.S. Publication Number 2004/0203838 A1 (hereinafter Joshi)**, and further in view of **Krause et al., U.S. Patent Number 6,160,799 (hereinafter Krause)**.

Regarding claims 1, 4 and 5, Joshi teaches a method in a wireless communications device that allocates neighbor signals to a candidate set (see p. 4 [0055-0056], p. 5 [0059] and Fig. 9), the method comprising: determining a number of

signals in an active set (see p. 5 [0065-0066]); allocating signals to the candidate set more quickly when the number of signals in the active set is less than a threshold number than when the number of signals in the active set is greater than the threshold number (see p. 5 [0059 & 0065-0070] [i.e. The teaching of Joshi that, mobile station asks whether a count of base stations in the active set exceeds a prescribed number (Na), for example, the number "one" and if there is a sufficient number of active set base stations, then off-frequency searching is ***not as critical*** as with an under-populated active set, in combination with the teaching of Joshi that, after on-frequency and off-frequency searching the mobile station may promote a base station from the mobile station's non-candidate neighbor set to its candidate set, broadly reads on the limitations "allocating signals to the candidate set more quickly when the number of signals in the active set is less than a threshold number than when the number of signals in the active set is greater than the threshold number" since Joshi teaches if off-frequency searching is necessary, i.e., when there is an under-populated active set, the mobile station finds off-frequency searching to be ***critical,*** therefore would promote a base station from the mobile station's non-candidate neighbor set to its candidate set quickly to avoid lost communications or drop calls]).

Moreover, in an analogous field of endeavor, Krause teaches a method and apparatus for maintaining the pilot set of a wireless communication device, such as a portable radiotelephone operating in a CDMA system, wherein the method and apparatus significantly improves the device's performance in a rapidly changing environment by quickly and reliably determining and promoting strong neighbor pilots to

the candidate set (see col. 2, line 66 through col. 3, line 5). According to Krause, if the mobile station is not able to promote the new strong neighbor pilots to the candidate set quickly enough, i.e., before communication on the active pilots is lost, then the call will drop, thus a need therefore exists in a rapidly changing mobile environment to maintain the pilot set in such a manner that the strong pilots are quickly determined and promoted to the candidate set (see col. 2, lines 40-56).

It would therefore have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the teachings of Krause with the method of Joshi to reliably and quickly allocate strong pilots to the candidate set in a rapidly changing mobile environment, in order to avoid drop calls or lost communications on the active pilots as taught by Krause (see col. 2, lines 40-56 and col. 3, lines 1-5).

Regarding claim 7, Joshi in view of Krause teaches all the limitations of claim 1. Joshi further teaches allocating neighboring signals to the candidate set based on signal promotion criteria (see p. 5 [0059]), allocating signals to the candidate set when the number of signals in the active set is less than the threshold number based on consideration of signal promotion criteria for not more than one scanning period (see p. 5 [0059 & 0065-0070]).

Regarding claim 8, Joshi in view of Krause teaches all the limitations of claim 1. In addition, Joshi teaches allocating signals to the candidate from a pre-candidate set (see p. 5 [0059]).

Regarding claims 9, 10, 11, 12 and 17, Joshi teaches a method in a wireless communications device that allocates neighbor signals to a candidate set based on

criteria considered over at least one scanning period (see p. 4 [0055-0056], p. 5 [0059] and Fig. 9), the method comprising: determining a number of signals in an active set (see p. 5 [0065-0066]); when the number of signals in the active set is greater than a threshold number, allocating neighbor signals to the candidate set using criteria considered over more than one scanning period (see p. 5 [0059 & 0065-0070] [i.e. The teaching of Joshi that, mobile station asks whether a count of base stations in the active set exceeds a prescribed number (Na), for example, the number "one" and if there is a sufficient number of active set base stations, then off-frequency searching is ***not as critical*** as with an under-populated active set, in combination with the teaching of Joshi that, after on-frequency and off-frequency searching the mobile station may promote a base station from the mobile station's non-candidate neighbor set to its candidate set, broadly reads on the limitation "when the number of signals in the active set is greater than a threshold number, allocating neighbor signals to the candidate set using criteria considered over more than one scanning period" since if off-frequency is ***not as critical,*** i.e., when a count of base stations in the active set exceeds a prescribed number, the mobile station will consider more base stations from the mobile station's non-candidate neighbor set, thus perform a slower search considering more than one base station from the mobile stations non-candidate neighbor set]); when the number of signals in the active set is less than the threshold number, allocating neighbor signals to the candidate set using criteria considered over fewer scanning periods than when the number of signals in the active set is greater than the threshold number (see p. 5 [0059 & 0065-0070] [i.e. The teaching of Joshi that, mobile station asks whether a count of

base stations in the active set exceeds a prescribed number (Na), for example, the number "one" and if there is a sufficient number of active set base stations, then off-frequency searching is ***not as critical*** as with an under-populated active set, in combination with the teaching of Joshi that, after on-frequency and off-frequency searching the mobile station may promote a base station from the mobile station's non-candidate neighbor set to its candidate set, broadly reads on the limitation "when the number of signals in the active set is less than the threshold number, allocating neighbor signals to the candidate set using criteria considered over fewer scanning periods than when the number of signals in the active set is greater than the threshold number" since if off-frequency is ***critical,*** i.e., when a count of base stations in the active set is below a prescribed number, the mobile station will consider more base stations from the mobile station's non-candidate neighbor set faster than when a count of base stations in the active set exceeds a prescribed number, thus performing a faster search over fewer scanning periods to consider a base station with a stronger pilot from the mobile stations non-candidate neighbor set to prevent a drop call or lost communication]).

Moreover, in an analogous field of endeavor, Krause teaches a method and apparatus for maintaining the pilot set of a wireless communication device, such as a portable radiotelephone operating in a CDMA system, wherein the method and apparatus significantly improves the device's performance in a rapidly changing environment by quickly and reliably determining and promoting strong neighbor pilots to the candidate set (see col. 2, line 66 through col. 3, line 5). According to Krause, if the

mobile station is not able to promote the new strong neighbor pilots to the candidate set quickly enough, i.e., before communication on the active pilots is lost, then the call will drop, thus a need therefore exists in a rapidly changing mobile environment to maintain the pilot set in such a manner that the strong pilots are quickly determined and promoted to the candidate set (see col. 2, lines 40-56).

It would therefore have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the teachings of Krause with the method of Joshi to reliably and quickly allocate strong pilots to the candidate set in a rapidly changing mobile environment, in order to avoid drop calls or lost communications on the active pilots as taught by Krause (see col. 2, lines 40-56 and col. 3, lines 1-5).

Regarding claims 6 and 13, Joshi in view of Krause teaches all the limitations of claims 1 and 9. Joshi further teaches allocating signals to the candidate set using criteria considered over fewer scanning periods only when the number of signals in the active set is less than the threshold number (see p. 5 [0059 & 0065-0070] and claim 9 as addressed above).

Joshi fails to explicitly teach the signals in the active set are assigned to fingers of a rake receiver. However, the use of a rake receiver is very well in the art and implemented in CDMA systems to search for stronger pilot signals to ensure the continuation of a cellular communication connection as taught for example by Krause.

In an analogous field of endeavor, Krause teaches a method and apparatus for maintaining the pilot set of a wireless communication device, such as a portable radiotelephone operating in a CDMA system, wherein the method and apparatus

significantly improves the device's performance in a rapidly changing environment by quickly and reliably determining and promoting strong neighbor pilots to the candidate set and wherein the signals in the active set are assigned to fingers of a rake receiver (see col. 2, line 66 through col. 3, line 5 and col. 3, lines 41-55 and Fig. 1).

It would therefore have been obvious to one of ordinary skill in the art at the time of the invention to modify Joshi with Krause to include a rake receiver, in order to reliably and quickly allocate strong pilots to the candidate set in a rapidly changing mobile environment, to avoid drop calls or lost communications on the active pilots as taught by Krause (see col. 2, lines 40-56 and col. 3, lines 1-5).

Regarding claim 18 and 19, Joshi in view of Krause teaches all the limitations of claim 17. Joshi further teaches operating the communications device in soft handoff with the signals in the active set (see p. 5 [0064]), dynamically changing the signal allocation criteria when the number of signals in the signal strength of the strongest signal in the active set changes relative to a signal strength threshold (see p. 5 [0064-0070]).

Allowable Subject Matter

3. Claims 2-3 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

(10) Response to Argument

Regarding claims 1 and 4, appellant	In contrast to appellant's assertions,

argues that Joshi and Krause, taken together or independently, fail to disclose, teach or suggest allocating signals to the candidate set more quickly when the number of signals in the active set is less than a threshold number than when the number of signals in the active set is greater than the threshold number.	examiner respectfully disagrees and maintains that Joshi and Krause meets the claimed limitations of "allocating signals to the candidate set more quickly when the number of signals in the active set is less than a threshold number than when the number of signals in the active set is greater than the threshold number." Examiner reiterates that Joshi teaches a mobile station determines membership of an active and candidate set during "off frequency" search process and allocates signals from a mobile station's non-candidate neighbor set to its candidate set when the mobile station finds that the energy of a base station's pilot signal exceeds a predetermined threshold (see p. 4 [0057], p. 5 [0059] and Fig. 7; step 714). According to Joshi the mobile station as illustrated in Figure 9, step 903, determines whether a count of base stations in the active set 702 (Fig. 7)

	exceeds a prescribed number (Na), for example "one" (se p. 5 [0065]); and if there is a sufficient number of active set base stations, then off-frequency searching is ***not as critical*** as with an under-populated active set where off-frequency searching is ***critical*** (see p. [0065]). Joshi further teaches during voice calls, the off frequency search process is necessarily conducted ***fairly often***, in order to maintain an accurately selected active set and avoid dropping the call (see p. 4 [0057]). Thus it is clear from the teachings of Joshi that, ***the criticality*** of performing an off-frequency search is related to how quickly signals are added to the active set, since Joshi explicitly teaches that when a count of base stations in the active set 702 is below a prescribed number (Na) [i.e. an under-populated active set] such as in a weak signal environment, off-frequency searching is ***critical*** *and* conducted ***fairly***

	often in order to maintain an accurately selected active set to avoid dropped calls, thus meaning the mobile station would quickly search for neighbor base stations and place them in the candidate set 704 if their measured pilots signal exceeds a given strength in order to prevent an undesirable call drop. In contrast, when there is a sufficient number of active set base stations, Joshi teaches off-frequency searching is ***not as critical*** *and* ***not*** conducted ***fairly often,*** since the mobile station does not have to quickly search for neighbor base stations to place in the candidate set in order to maintain an accurately select active set to avoid dropped calls, thus it is clear from the teachings of Joshi that when a count of base stations in the active set 702 is below a prescribed number (Na) [i.e. an under-populated active set] such as in a weak signal environment, off-frequency

	searching is ***critical** and* conducted ***fairly often*** in order to maintain an accurately selected active set to avoid dropped calls, meets how quickly signals are allocated to the candidate set, since there is a need for the mobile station to quickly search for neighbor base stations and place them in the candidate set 704 if their measured pilots signal exceeds a given strength in order to prevent undesirable call drops. Furthermore, the examiner respectfully maintains that the teachings of Krause further reinforces the need to quickly allocate signals to the candidate set when the number of signals in the active set is less than a threshold number than when the number of signals in the active set is greater than the threshold number, since Krause teaches a need for a mobile station to ***quickly*** determine which neighbor pilots to promote to the candidate set to ensure that the strongest pilots will remain in the

	active set, in order to significantly improve the mobile's performance in a rapidly changing environment by maintaining the pilot set in such a manner that the strong pilots are quickly determined and promoted to the candidate set (see Krause, col. 2, lines 40-56).

Regarding claim 6, appellant argues that Joshi and Krause, taken together or independently, fail to disclose, teach or suggest allocating signals to a candidate set based on the number of signals in the active set and based on rake finger energy.	Examiner respectfully disagrees with appellant's assertions and maintains that Joshi and Krause meets the claimed limitations of "allocating signals to a candidate set based on the number of signals in the active set and based on rake finger energy." Examiner reiterates that Joshi teaches a mobile station determines membership of an active and candidate set during "off frequency" search process and allocates signals from a mobile station's non-candidate neighbor set to its candidate set when the mobile station finds that the energy of a base station's

	pilot signal exceeds a predetermined threshold (see p. 4 [0057], p. 5 [0059] and Fig. 7; step 714). According to Joshi, the mobile station 602 detects the strength of the strongest pilot signals in the active set 702 of mobile station 602 (see p. 4 [0054]). One of ordinary skill in the art further recognizes that in a CDMA system it is very well known that a rake receiver comprises a plurality of finger receivers and at least one searcher receiver for determining the strength of the strongest pilot signal in an active set as taught by Joshi above and further taught by Krause (see col. 3, lines 48-51, col. 4, lines 1-9 and Fig. 1; shows a finger receiver 107). Krause further teaches the pre-candidate pilots are scanned using fingers of a rake receiver until the strongest pilot of the pre-candidate set is identified and promoted to the candidate set (see col. 4, lines 25-48). Thus it is clear the teaching of Joshi that,

	the mobile station 602 detects the strength of the strongest pilot signals [i.e. the measured energy of the strongest pilot signal as identified by the finger of the rake receiver having the strongest energy] in the active set 702 of mobile station 602 and the teaching of Krause that, the pre-candidate pilots are scanned using fingers of a rake receiver until the strongest pilot of the pre-candidate set is identified by the finger of the rake receiver having the strongest energy [i.e. the strongest measured energy pilot] and promoted to the candidate set equates to the claimed limitations of "allocating signals to a candidate set based on the number of signals in the active set and based on rake finger energy."

Regarding claim 7, appellant argues that Joshi and Krause, taken together or independently, fail to disclose, teach or	Examiner respectfully disagrees with appellant's assertions and maintains that Joshi and Krause teach the number of

suggest the number of scanning periods over which signal promotion criteria are considered.	scanning periods over which signal promotion criteria are considered. Examiner reiterates that Joshi teaches at periodic intervals (e.g. five seconds) a mobile station determines membership of an active and candidate set during "off frequency" search process and allocates signals from a mobile station's non-candidate neighbor set to its candidate set when the mobile station finds that the energy of a base station's pilot signal exceeds a predetermined threshold (see p. 1 [0005], p. 3 [0046], p. 4 [0057], p. 5 [0059] and Fig. 7; step 714). Thus it is clear Joshi and Krause meets and teaches the number of scanning periods over which signal promotion criteria are considered.

Regarding claim 9, appellant argues that Joshi and Krause, taken together or independently, fail to disclose, teach or	Examiner respectfully disagrees with appellant's assertions and maintains that Joshi and Krause teaches allocating

suggest allocating neighbor signals to the candidate set using criteria considered over fewer scanning periods than when the number of signals in the active set is greater than the threshold number.	neighbor signals to the candidate set using criteria considered over fewer scanning periods than when the number of signals in the active set is greater than the threshold number. Examiner reiterates that Joshi teaches at periodic intervals (e.g. five seconds) a mobile station determines membership of an active and candidate set during "off frequency" search process and allocates signals from a mobile station's non-candidate neighbor set to its candidate set when the mobile station finds that the energy of a base station's pilot signal exceeds a predetermined threshold (see p. 1 [0005], p. 3 [0046], p. 4 [0057], p. 5 [0059] and Fig. 7; step 714). According to Joshi the mobile station as illustrated in Figure 9, step 903, determines whether a count of base stations in the active set 702 (Fig. 7) exceeds a prescribed number (Na), for example "one" (se p. 5 [0065]); and if there

	is a sufficient number of active set base stations, then off-frequency searching is ***not as critical*** as with an under-populated active set where off-frequency searching is ***critical*** (see p. [0065]). Thus the teachings of Joshi above clearly meets the claimed limitations of "allocating neighbor signals to the candidate set using criteria considered over fewer scanning periods than when the number of signals in the active set is greater than the threshold number," since Joshi explicitly teaches if there is a sufficient number of active set base stations, then off-frequency searching is ***not as critical***, thus meaning the mobile station does not have to expeditiously scan [i.e. *implies scanning for a longer period of time*] for pilots to the candidate set since the mobile station is not in a weak signal environment, compared to an under-populated active set [*i.e. the mobile station is in a weak signal*

	environment] where off-frequency searching is ***critical,*** and the mobile stations has to expeditiously scan [i.e. implies scanning for a shorter period of time] for neighbor base stations to place in the candidate set 704 to prevent an undesirable call drop.

Regarding claim 10, appellant argues that Joshi and Krause, taken together or independently, fail to disclose, teach or suggest the number of scanning periods over which signal promotion criteria is considered.	Examiner respectfully disagrees with appellant's assertions and maintains that Joshi and Krause teach the number of scanning periods over which signal promotion criteria are considered. Examiner reiterates that Joshi teaches at periodic intervals (e.g. five seconds) a mobile station determines membership of an active and candidate set during "off frequency" search process and allocates signals from a mobile station's non-candidate neighbor set to its candidate set when the mobile station finds that the energy of a base station's pilot signal

	exceeds a predetermined threshold (see p. 1 [0005], p. 3 [0046], p. 4 [0057], p. 5 [0059] and Fig. 7; step 714). Thus it is clear Joshi and Krause meets and teaches the number of scanning periods over which signal promotion criteria is considered.

Regarding claim 13, appellant argues that Joshi and Krause, taken together or independently, fail to disclose, teach or suggest allocating signals to a candidate set based on rake finger energy.	Examiner respectfully disagrees with appellant's assertions and maintains that Joshi and Krause meets the claimed limitations of "allocating signals to a candidate set based on the number of signals in the active set and based on rake finger energy." Examiner reiterates that Joshi teaches a mobile station determines membership of an active and candidate set during "off frequency" search process and allocates signals from a mobile station's non-candidate neighbor set to its candidate set when the mobile station finds that the energy of a base station's

	pilot signal exceeds a predetermined threshold (see p. 4 [0057], p. 5 [0059] and Fig. 7; step 714). According to Joshi, the mobile station 602 detects the strength of the strongest pilot signals in the active set 702 of mobile station 602 (see p. 4 [0054]). One of ordinary skill in the art further recognizes that in a CDMA system it is very well known that a rake receiver comprises a plurality of finger receivers and at least one searcher receiver for determining the strength of the strongest pilot signal in an active set as taught by Joshi above and further taught by Krause (see col. 3, lines 48-51, col. 4, lines 1-9 and Fig. 1; shows a finger receiver 107). Krause further teaches the pre-candidate pilots are scanned using fingers of a rake receiver until the strongest pilot of the pre-candidate set is identified and promoted to the candidate set (see col. 4, lines 25-48). Thus it is clear the teaching of Joshi that,

	the mobile station 602 detects the strength of the strongest pilot signals [i.e. the measured energy of the strongest pilot signal as identified by the finger of the rake receiver having the strongest energy] in the active set 702 of mobile station 602 and the teaching of Krause that, the pre-candidate pilots are scanned using fingers of a rake receiver until the strongest pilot of the pre-candidate set is identified by the finger of the rake receiver having the strongest energy [i.e. the strongest measured energy pilot] and promoted to the candidate set equates to the claimed limitations of "allocating signals to a candidate set based on rake finger energy."

Regarding claim 17, appellant argues that Joshi and Krause, taken together or independently, fail to disclose, teach or suggest dynamically changing the signal	Examiner respectfully disagrees with appellant's assertions and maintains that Joshi and Krause meets the claimed limitations of "dynamically changing the

allocation criteria based on either a number of signals in an active set or on a signal quality of a strongest signal in the active signal set.	signal allocation criteria based on either a number of signals in an active set or on a signal quality of a strongest signal in the active signal set." Examiner reiterates that Joshi teaches a mobile station determines membership of an active and candidate set during "off frequency" search process and allocates signals from a mobile station's non-candidate neighbor set to its candidate set when the mobile station finds that the energy of a base station's pilot signal exceeds a predetermined threshold (see p. 4 [0057], p. 5 [0059] and Fig. 7; step 714). According to Joshi the mobile station as illustrated in Figure 9, step 903, determines whether a count of base stations in the active set 702 (Fig. 7) exceeds a prescribed number (Na), for example "one" (se p. 5 [0065]); and if there is a sufficient number of active set base stations, then off-frequency searching is ***not as critical*** as with an under-populated

	active set where off-frequency searching is ***critical*** (see p. [0065]). The teachings of Joshi above clearly meets the claimed limitations of " dynamically changing the signal allocation criteria based on a number of signals in an active set," since Joshi explicitly teaches if there is a sufficient number of active set base stations, then off-frequency searching is ***not as critical*** as with an under-populated active set where off-frequency searching is ***critical,*** thus showing the process of performing the "off-frequency search" to determine the membership of an active and candidate set [i.e. the signal allocation criteria] is dynamically changed based on whether there is a sufficient number of active set base stations where off-frequency searching is ***not as critical*** or based on an under-populated active set where off-frequency searching is ***critical.***

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

(12) Conclusion

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Anthony S. Addy

Patent Examiner

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